

# We almost certainly execute innocent people with cruelty. This isn't justice

Given the flaws in Cameron Todd Willingham's case, how can we ever be certain of the guilt of anyone sentenced to death?



**Scott Lemieux**

theguardian.com, Tuesday 5 August 2014 05.38 AEST



Cameron Todd Willingham in a death row interview with the Corsicana Daily Sun taken nine days before his execution in 2004. Photograph: [Corsicana Daily Sun](#) / Corsicana, TX

Recent events have revealed a fundamental truth about capital punishment in the United States: lethal injections administered by the states have an alarming tendency to torture people to death. There were terribly botched executions in Florida in 2006 (revealed this year) , in Oklahoma in April and then last month in Arizona, where Joseph Wood took two hours to die and had to be injected 15 times with an “experimental” cocktail of drugs.

And yet, as horrifying as these torturous executions are, some people dismissed the horrors by noting that there was no doubt about the guilt of the condemned. But it would be unwise to assume that everyone condemned to death is guilty of a terrible crime: a new report from the Marshall Project explains how, only a decade ago, Texas executed a

man who was almost certainly innocent – and did so in a way that makes it enormously unlikely that he was the only innocent man to die in the state’s high-volume execution chambers.

The case of Cameron Todd Willingham is a particularly striking example of the cavalier way in which the state of Texas – which has executed more than 500 people since the death penalty was reauthorized by the US supreme court in 1976 – administers the death penalty. Not only does the state *to this day* have essentially no evidence that Willingham committed the crime for which he was accused, it has no real evidence that a crime was committed at all.

The December 1991 event that led to Willingham’s execution was undeniably horrible: He escaped a house fire in which his three children (one-year-old twins and a two-year-old daughter) were killed. The state indicted and convicted Willingham for arson, and he was executed for the crime in 2004. I don’t favor the death penalty for anyone, but if Willingham really did burn his infant children alive, I acknowledge that it would be hard to convince anyone but the most principled death penalty opponent that he didn’t deserve the punishment he received.

The problem, as David Grann painstakingly demonstrated in a blockbuster piece of investigative reporting for the New Yorker five years ago, is that the state’s case against Willingham would have needed considerably more evidence to be solid enough to be considered a shambles. It’s essentially impossible to state that Willingham was *factually* innocent: he was present when the fire started, and nobody still alive knows to an absolute certainty whether Willingham committed arson. But we *do* know that the case against him was so weak that no responsible prosecutor should have even indicted him. And it’s equally possible that he would not have been convicted had he been represented by defense attorneys other than the ones who “called only one witness” on his behalf and failed to mount any credible challenges to the gaping flaws in the prosecution’s case.

We should leave aside the irrelevant trivia and just-so stories about Willingham’s character introduced by the prosecution and its expert witnesses (including *He listened to hard rock as a teenager!* and *He did not act according to arbitrary standards of how parents whose children have been killed in the most horrifying manner possible!*) – the kind of narratives that could be used to convict anyone of anything. Without that, there were only two real pieces of evidence produced against Willingham.

The first was forensic testimony purporting that the “char patterns” remaining after the fire showed that the fire had been intentionally set. The scientific reliability of this forensic testimony, however, ranks somewhere between astrology and Ouija Boards. Actual scientific research has shown that the char patterns in the remains of Willingham’s house could well have been caused by an accidental fire. The evidence is now considered so worthless that even the chief prosecutor has conceded that it was

“undeniably flawed”.

So what’s left of the state’s case against Willingham – and our presumptions about the guilt of those sentenced to death? The Marshall Project’s report shows that, in addition to the flawed forensic “evidence” and the meaninglessly assertions about Willingham’s supposed character, Texas had only the testimony of a jailhouse snitch named Jimmy Webb, who testified that Willingham had confessed to him. But Webb’s uncorroborated and self-serving story was remarkably implausible: the jury was asked to believe that Willingham, who risked a death sentence rather than taking a plea bargain, would spontaneously confess to a stranger in prison.

The Marshall Project’s report confirms what should have been obvious at the time – Webb’s story was almost certainly made up out of whole cloth to gain benefits offered by the prosecution. Webb has since admitted that Willingham “never told me nothing” and that he lied on the stand when he said that prosecutors had not offered anything for his testimony.

Webb, at the time of the trial, had mental health issues and serious drug and alcohol additions which he supported through theft – and was being held for robbing a woman a knifepoint. The prosecution offered to reduce the robbery charges against Webb and to provide career assistance if he would testify against Willingham. Documents show that the prosecution came through on these promises – intervening to reduce Webb’s jail time, while a friend of the prosecutor made repeated cash payments to Webb both inside and outside of prison.

The problems revealed by the execution of Willingham – unethical prosecutors willing to do anything to secure convictions, a perfunctory appellate process, and grossly incompetent defense attorneys – are not just confined to his case. Texas has already exonerated 5 people on death row. How confident can we be in the factual guilt of, for example, Gary Lee Graham, executed for a murder he allegedly committed as a 17-year-old based almost entirely on the testimony of a single eyewitness? How confident can we truly be in the guilt of anyone sentenced to death in our legal system?

The death penalty as practiced in the United States is cruel in its infliction of unnecessary pain and suffering. But what’s even worse is the completely unacceptable risk that an innocent person will be executed. Even for those who don’t oppose the death penalty in theory, the Willingham case shows a criminal justice system inadequate to administer it with anything remotely resembling the fairness that a punishment of that severity requires.



## Get the best of Comment is free

The most shared comment, analysis and editorial articles delivered every weekday lunchtime.

**Sign up for the Comment is free email**

### More from the guardian

1914: the Great War has become a nightly pornography of violence 04 Aug 2014

A depressingly British tale of friends in high places 04 Aug 2014

Ebola has infected public discourse with a new xenophobia 04 Aug 2014

Should women shave their legs and under-arms? 04 Aug 2014

A nipple ring is a vibrator is a sex doll: why Sexpo didn't turn me on 04 Aug 2014

### More from around the web

Promoted content by Outbrain

George Bush the worst president in 100 years: here's why (The Age)

The car that outsmarts speed cameras (Drive.com.au)

The June 2014 update on Dolce and Gabbana's trial (Vogue Australia)

Carney pictured with Corby sisters (Daily Telegraph Sport)

What do employers pay the most attention to in your job application? Find out (The Naked CEO)

Recommended by